

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

76-5014

United States Court of Appeals FOR THE SECOND CIRCUIT

In the Matter of

ALRAC CORPORATION f.d.b.a.,
RADIATION RESEARCH CORPORATION
f.d.b.a., THE ALRAC COMPANY,

Debtor.

CARL E. BARNES,

Appellant,

v.

ALRAC CORPORATION,

Debtor-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

APPELLANT'S REPLY BRIEF

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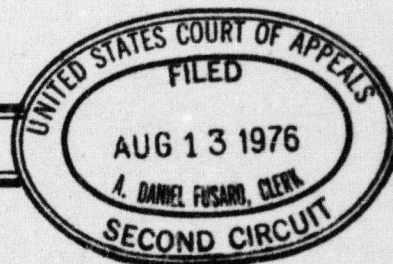


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APPELLANT'S REPLY BRIEF

Preliminary Statement

This Brief is submitted by appellant, Carl E. Barnes ("Barnes"), in response to the "Brief for Appellees," ("Alrac's Brief") in which debtor-appellee Alrac Corporation ("Alrac") purports to be joined by various persons not parties to this appeal.

ARGUMENTPOINT ITHE PLAN IS NOT FEASIBLE

In order that a Plan under Chapter XI may be confirmed, it must be "feasible." Bankruptcy Act §366(2), 11 U.S.C. §766(2). The feasibility of Alrac's Plan is utterly refuted by undisputed facts. Since the Plan was clearly not feasible, as a matter of arithmetic, it should not have been confirmed, and affirmance of the confirmation was clear error.

The definition of feasibility which Alrac itself proposes, at page 28 of its Brief, is that

"creditors must be assured of receiving what is promised them under the arrangement." In re American Trailer Rentals Co., 325 F.2d 47, 53 (10th Cir. 1963), rev'd on other grounds, 379 U.S. 594 (1964).

What the creditors were promised is easy to state. Creditors in both Class II and Class III were promised 100% of their debts--not immediately, but according to payment programs set out in the Plan. (A29, A30.) This provision for full payment was also repeated by the Bankruptcy Court in its description of the Plan. (A303.) It was repeated by counsel for Chevron Research Company* in argument before the District

* Chevron Research Company, together with Chevron Chemical Company, will be referred to hereinafter as "Chevron."

Court. (A424.) There can be no doubt that a deferred 100% payout is what was promised the Class II and Class III creditors.

The payment schedule for Class II creditors provides for payments totalling \$2,500,000. (A36.) No other cash payments to Class II creditors are provided for in the Plan. The Class II creditors also are to receive stock. This was negotiated in order to compensate these creditors for their loss of interest, delay in payment, and the possibility that they might not receive the contemplated cash payments if Alrac did not receive the expected payments from Chevron. (A261.) But the cash payment to Class II creditors was fixed at a maximum of \$2,500,000, payable over a period of seven years. (A36.)

It is a mathematical certainty that these payments of \$2,500,000 cannot provide the 100% payment promised in the Plan if the claims of Class II creditors exceed \$2,500,000. The Class II claims do exceed \$2,500,000, as was shown in argument before the District Court, and the admissions of Alrac in that argument show that disputed claims may bring the Class II total almost to \$4,000,000. As a matter of arithmetic, and based on the admissions made by Alrac, the Plan is infeasible. The only uncertainty is as to the extent of infeasibility.

In his argument before the District Court, Barnes' counsel enumerated Class II claims, reaching a total of \$2,796,379. (A339-49.) It was admitted by Alrac's counsel that these claims were unchallenged. (A349.) On this basis

alone, the Plan was not feasible.

However, there are far greater financial obligations in Class II. In response, Alrac's counsel* described two claims, one of "well beyond a million dollars," the other of "\$200,000 or \$300,000." (A375.) These claims, he said, were going to be objected to. (A374-75.) Obviously a future objection**to a claim does not constitute a rejection of the claim. Of more importance, as of the time the Plan's feasibility should have been considered by the Bankruptcy Court and at the time of argument in the District Court, the Geerdes and Fiske claims were extant and fully includable in Class II.

Even if these claims were rejected in their entirety, there would still be over \$2,600,000 in Class II claims which would be unassailable. (The total of \$2,796,000 included \$172,000 for the Geerdes claim and no allowance at all for the Fiske claim.) The Plan is thus infeasible to the extent of over a hundred thousand dollars even if all possible doubtful claims are rejected.

* Alrac's Brief, at page 29, attributes the statements about the Geerdes and Fiske claims to Barnes' counsel. This is utterly false. Barnes' counsel referred to the Geerdes claim in argument only in passing (A346), and then in the amount specified months earlier in a tabulation submitted by Alrac. (A95.) Barnes' counsel did not mention the Fiske claim at all.

**The Bankruptcy Court docket sheet (A1-7) indicates that no objection to the Geerdes or Fiske claims had been filed by the Debtor as of April 8, 1976.

The admissions of Alrac's counsel are not necessary to establish infeasibility, but they do serve to supplement the mathematical certainty of infeasibility. If some of the disputed claims are negotiated successfully (A375), the infeasibility will increase. If the claims are upheld in whole or in part, the infeasibility may rise by as much as one and a third million dollars. But there is no way that even the undisputed claims of Class II creditors can be paid in full as the Plan promises. It is mathematically impossible to pay over \$2,600,000 in full with payments totalling only \$2,500,000. To hold otherwise was clearly erroneous.

POINT II

THE RECORD SHOWS THAT THE
DISPUTED CLAIMS WERE NOT
SUBMITTED TO THE BANKRUPTCY
COURT BEFORE THE CLOSE OF
THE CREDITORS' MEETING

There is not a scintilla of evidence in the Record on this appeal to indicate that the disputed claims (numbers 272, 273 and 274; A79-83) were present in the Bankruptcy Court courtroom at the meeting of creditors on December 20, 1974. The transcript of that hearing affirmatively demonstrates that although several other documents were submitted to Bankruptcy Judge Seidman, the disputed Class I claims were never submitted during the creditors' meeting.

Alrac's contention, at page 32 of its Brief, that Barnes does not dispute that these claims were examined by him

in the courtroom that day is false. Far from being a "fact" as Alrac argues, the alleged presence of the disputed claims in the courtroom on December 20, 1974 has no evidentiary support whatsoever in the record.

A number of documents were submitted to the Bankruptcy Court on December 20, 1974, but the disputed claims cannot have been among them. Since Alrac now implies (at page 33 of its Brief) that the claims were ". . . 'Filed' with or 'submitted' to the court at the time of the hearing," a review of the transcript will demonstrate that there was no such submission or filing.*

The first document handed up to the Bankruptcy Court (A51) was Alrac's Computation of Vote on Arrangement. (A89-105.) This recited a review of the "court records" (A89); thus it is clear that there was no reliance on documents not in the "court records." What was handed up was not a sheaf of claims, but a computation, what Alrac now calls "tally sheets".

The next documents submitted to the Bankruptcy Court were consents which had not previously been filed.

"MR. EVANS: We haven't seen any consents or anything. I don't know where they are.

* It is interesting to note that Alrac no longer urges that the disputed claims were filed with the clerk only after the close of the creditors' meeting. This was alleged in argument before the District Court (A404), but Alrac now urges, contradictorily, that the filing or submission to the Bankruptcy Court was done while the hearing was in progress. Neither of these contradictory positions has any support in the record.

"THE COURT: What is your -- they haven't filed anything yet.

"MR. KRICK: I have them all here."
(A51.)

These were not proofs of claims, but consents. There had been on earlier discussion of proofs of claims, and Mr. Krick had acquiesced in the Bankruptcy Judge's statement "They are on file here." (A51; emphasis supplied.) Not "they will be filed," nor "they are in counsel's possession," nor "they are constructively filed under Bankruptcy Rule 509," but that they were then on file with the Bankruptcy Judge. It is Barnes' position that this statement by the Bankruptcy Judge sets forth the criterion to be applied by the Court in counting votes. Alrac, which acquiesced then, cannot dispute it now. Only the claims then filed with the Bankruptcy Court, or submitted to the Bankruptcy Court during the meeting, may be counted, in determining the outcome of the vote of creditors.

The next document submitted to the Bankruptcy Court was also submitted by Mr. Krick. Mr. Murphy had informed the Bankruptcy Court that additional claims had been filed that afternoon. The Bankruptcy Court asked "Is the acceptance on file?" Mr. Murphy replied "Yes, your Honor." (A60.)

This interchange jogged Mr. Krick's memory. He remembered that he had still more claims and acceptances in his possession. He had \$600,000 of claims and acceptances of Class III creditors! And he gave these to the Bankruptcy Court for the record.
(A60.)

Alrac argues that Krick also had in his possession the three disputed Class I creditors' claims. At the time of the creditors' meeting, a substantial majority in amount of the Class I creditors listed on the Bankruptcy Court's Claim Register had not accepted the Plan. (The non-accepting creditors' claims exceeded \$26,000; the accepting creditors' claims, other than the disputed claims, came to less than \$22,000.) Thus the disputed claims were absolutely necessary to attain a majority of Class I creditors. They were the predominant part, over 65% in amount, of the Class I acceptances on which Alrac was relying. If these claims were not counted by the Bankruptcy Court, the Plan could not be confirmed.

But where were the disputed Class I claims? They had not actually been filed with the clerk of the Bankruptcy Court, nor handed up to the Bankruptcy Judge. Mr. Krick knew that the meeting of creditors was being held. He had just submitted other claims. But the crucial Class I claims, on which the acceptance of the Plan depended, were not submitted to the Bankruptcy Judge. Alrac argued in the District Court that Mr. Krick submitted the disputed claims to the Bankruptcy Court clerk after the close of the creditors' meeting. (A404.) This assertion was without a scintilla of support in the record. Alrac now claims that the disputed claims were submitted to, or filed with, the Bankruptcy Court during the creditors' meeting. This

contention is affirmatively refuted by the transcript, which shows that Mr. Krick submitted

- (a) Alrac's Computation of Vote on Arrangement (A51);
- (b) Acceptances (A51); and
- (c) Claims and acceptances for Class III creditors. (A60.)

The transcript thus demonstrates that Mr. Krick did not submit the disputed claims. On the contrary, if he had them in his possession (as to which there is no evidence) it is clear that he withheld them from the Bankruptcy Court and from counsel.

In the Bankruptcy Court, Alrac did not assert that the disputed claims were in the courtroom and were being submitted to the Bankruptcy Court. Rather, Alrac asserted, in writing, that the disputed claims were already in the "court records." (A89.)

This misrepresentation of the presence of the disputed Class I claims in the records of the Bankruptcy Court, which was also a false statement as to the vote of the creditors as shown by the "court records," finds a parallel in the argument before the District Court. There, counsel for Alrac grossly misstated the contents of an affidavit. Compare the wild accusations about Barnes' demand for "shop rights" at A416-18 with the actual content of the Wolfe Affidavit (A472-80, and

particularly A479.)* In a fashion reminiscent of his misstatements to the Bankruptcy Court, Alrac's counsel also repeatedly asserted that the affidavit was in the record on the appeal to the District Court, (A417, A457) when in fact it was not part of such record.

It is the height of duplicity now to charge Barnes with inspecting and failing to object to claims which the record demonstrates were not filed or handed up to the Bankruptcy Court on December 20, 1974, whether or not such claims were then secreted somewhere on Mr. Krick's person.

Nor can Barnes now be charged with failure to object to the inclusion of the disputed claims in the Computation of Vote (A89ff.) when Barnes and his counsel were then relying on the false representation to the Bankruptcy Court by counsel for Alrac that such computation was based upon claims actually contained in the "court records." (A89.)

POINT III

RULE 509 DOES NOT AUTHORIZE COUNTING THE DISPUTED CLAIMS

In support of its inclusion of the Serico (A79-80) and Mitsubishi (A81-82) and Peters (A83) claims in its computation of Vote on Arrangement (A89ff.), Alrac relies upon Bankruptcy

* Alrac's counsel, as a notary public, had taken Wolfe's oath to the affidavit (A480) and had submitted it to the Bankruptcy Court.

Rule 509(c). However, Alrac has failed to comply with each and every requirement of Rule 509(c).

Rule 509(c) imposes five requirements before a paper which is intended to be filed may be deemed filed as of the date of its original delivery:

- (i) Erroneous delivery to one of a list of named officers.
- (ii) Notation of date of delivery.
- (iii) Transmission forthwith to the proper person.
- (iv) The interest of justice must be served.
- (v) The determination is to be made by the court.

It is apparent from the Record that no notations of dates of delivery of the disputed claims were made as required by Rule 509(c). Photographic copies of the proofs of claim are at A79-80, A81-82 and A83. It is equally apparent that transmission to the proper person was not "forthwith." On the contrary, even if Alrac's version of the facts is credited for this purpose, the disputed claims were suppressed when other claims were given to the Bankruptcy Court by Mr. Krick, who is alleged to have had these claims, also, in his possession. Suppression of these Class I claims by Mr. Krick would of course have been senseless, so the obvious inference is that Mr. Krick did not in fact have such claims in his possession. But in any event,

there was no compliance with the "forthwith" requirement of Rule 509(c).

A third obvious lapse on Alrac's part is that it has failed to make any application for an order as required by Rule 509(c). A paper is not deemed filed nunc pro tunc until the court so orders. No such order has been made by the Bankruptcy Court.

Alrac has misinterpreted a Connecticut case, In re TM Systems, Inc., CCH Bankr.L.Rep. ¶ 65,539 (D. Conn. 1974), as disclosing the prevailing practice in Connecticut. That case utilized what the court there characterized as "the play in the joints of the law" (opinion, at p. 7) to reach what it saw as an equitable result. That case describes an unfortunate incident, not a regular practice. On oral argument Alrac's counsel admitted that TM Systems was "a case of first impression in this jurisdiction, and as far as I know in any other jurisdiction." (A405.) One swallow does not make a summer, nor does one equitable determination rise to the level of "[t]he practice in the Bankruptcy Court for the District of Connecticut." (Alrac's Brief at 33, fn.) The evil of the lapse condoned by the TM Systems decision, there equitably motivated, is amply demonstrated by the prejudice to a party and to the Court that has arisen in this proceeding.

It is clear that TM Systems did not mandate the practice there disclosed, nor would it have validated the

claims except to avoid gross unfairness and inequity. TM Systems is not a holding, as Alrac would have it, that a co-counsel for the creditors' committee is necessarily within the ambit of Rule 509(c). He is certainly not on the list in the Rule.

The most extreme violation of Rule 509(c) is of the requirement that the interest of justice be satisfied. Mr. Krick, the same attorney on whom Rule 509(c) is proposed to operate, had rejected and ignored telegraphic pleas by unidentified creditors that their claims be voted as rejections of the Plan. (A57-58.) His basis was that "nothing appears on the docket sheet that refers to those creditors." (A57-58.) It is equally true that nothing appeared on the docket sheets -- at that time and for over one week thereafter -- which referred to the disputed Serico and Mitsubishi Class I claims. It is even possible that the disputed claims were among those which were telegraphically withdrawn. The creditors' committee co-counsel's statement about the docket sheets would be literally true, if disingenuous. Alrac's statement that the Computation of Vote was based on the "court records" (A89) was an outright falsehood.

It would be grossly inequitable to permit Alrac to pick and choose among the claims which could vote on its Plan. The telegraphic rejections of the Plan were not considered, and it is known that they were Class I creditors. (A57.)

Other Class I creditors who assented to the Plan should not be included on an unequal basis. It is respectfully submitted that Rule 509(c) would not justify deeming the claims which were suppressed during the creditors' meeting as having been filed thereat. In the absence of an application under Rule 509(c) it is also respectfully submitted that this Court should not deem an application under Rule 509(c) to have been made and granted.

POINT IV

ALRAC MAY NOT SPLIT
PETERS' CLAIMS TO MAKE
HIM A CLASS I CREDITOR

Alrac's Plan provides that Class I creditors are

"All persons or companies having
supplied merchandise or services and
who have claims up to \$20,000." (A28.)

It is obvious that the Plan classifies creditors, not claims. A creditor is in Class I or Class II, according to whether the amount of his "claims" exceeds \$20,000. There is no classification of claims, nor is there a distinction on the basis of the amount on one of several proof of claim forms.

The various claims of Edward M. Peters (A68-69; A70-71; A72-73; A74-75; A76-77; A78; A83) are each for an amount less than \$20,000. As was shown in Barnes' original Brief, the total of all of Peters' claims is over \$20,000. This is not disputed by Alrac in its Brief.

Instead, in its Brief at pages 39-40, Alrac takes the remarkable position that notwithstanding that Peters is owed more than \$20,000, he should be allowed to qualify all his claims under Class I, seriatim. Alrac contends in its Brief that this is a choice open to creditors, that the Alrac Plan contains nothing to preclude them from electing that claims which would otherwise be aggregated under Class II should be treated separately under Class I.

Alrac further contends that Peters has so elected.* If Peters could belatedly elect at this late date and thus vote all his claims in favor of the Plan, there is no reason why the same election should not be available to Barnes. The defeat of the Plan would thus be assured. The aggregate of Barnes' salary claim, if thus presented in separate components, exceeds the combined total of all Class I creditors tabulated by Alrac as accepting the Plan.

In a second attempt to force Peters into Class I status, Alrac proposes to examine behind the Bankruptcy Court's

* As a Class II creditor, Barnes would receive a slightly larger share of the cash payments and stock by reason of such an election by Peters not to be included in Class II. If this appeal fails, Alrac and Peters will be estopped to deny that Peters is a Class I creditor.

initial classification of claim 241 as a priority claim and to segment off \$600 from claim 241 in the amount of \$18,941.43. (A78.) This would divide that claim into two claims, one for \$18,341.43, the other for \$600.

Alrac's basis for this treatment is that only \$600 is accorded priority status under Section 64a(2) of the Bankruptcy Act, 11 U.S.C. § 104a(2). It is doubtful that Alrac may raise this objection, since it has not hitherto objected to the priority classification by the Bankruptcy Court of Peters' claim. (See the Claims Register of the Bankruptcy Court, at A87.)

For the purpose of voting on the Plan, Peters' claim 241 is either a priority claim in toto as it was classified on the Bankruptcy Court register (A87), or it is not a priority claim even to the extent of \$600. On its face, the claim is for wages "for 1972, 1973." (A78.) The Court may take judicial notice that no part of either 1972 or 1973 fell within three months of August, 1974. Thus it is clear that if claim 241 is examined for compliance with Section 64a(2), there can be no priority as to the \$600 thereof. This attempt by Alrac to segment Peters' claim and force him into Class I must fail. Peters' claim for \$18,941.43, when aggregated with his other claims amounting to \$1,383.54, places Peters in Class II.

The significance of the dispute over Peters' classification as a creditor is two-fold. The outcome of this

appeal may depend directly on the extent to which Peters' various claims may be counted as voted in Class I. In addition, the dispute over Peters' classification arises only because Alrac has insisted on counting claims which were not listed on the Bankruptcy Court's Claim Register at the time of the creditors' meeting of December 20, 1974. That Claim Register was proposed by Mr. Krick (who referred to the "docket sheets") and was accepted by the Bankruptcy Court as "the best possible approach." (A55.) The Claim Register was used to reject withdrawals of acceptances by creditors whose names did not appear thereon. (A57-58.) It is Alrac's insistence on counting claims which concededly did not appear on the Claim Register on December 20, 1974, which raises the present issue over Peters' classification. If such claims are properly excluded from the vote, Peters' status is undisputed. It is equally undisputed that a majority of Class I creditors whose claims were listed on the Claims Register rejected the Plan.

POINT V

CHAPTER X IS MORE APPROPRIATE THAN CHAPTER XI

At page 14 of its Brief, Alrac cites nine leading cases dealing with the question of whether a corporate insolvency should be treated under Chapter X or Chapter XI of the Act.

SEC v. United States Realty and Improvement Co., 310 U.S. 434, 456 (1940); General Stores Corp. v. Shlensky, 350 U.S. 462 (1956); SEC v. American Trailer Rentals Co., 379 U.S. 594 (1965); SEC v. Liberty Baking Corp., 240 F.2d 511 (2d Cir.), cert. denied, 353 U.S. 930 (1957); In re Lea Fabrics, Inc., 272 F.2d 769, 772 (3d Cir. 1959), vacated as moot, SEC v. Lea Fabrics, Inc., 363 U.S. 417 (1960); In re Grayson-Robinson Stores, Inc., 215 F. Supp. 921 (S.D.N.Y.) aff'd, 320 F.2d 940 (2d Cir. 1963); SEC v. Canandaigua Enterprises Corp., 339 F.2d 14 (2d Cir. 1964); In re Arlan's Department Stores, Inc., 373 F. Supp. 520 (S.D.N.Y. 1974); In re Stonehenge Industries, Inc., 74 B 339 (S.D.N.Y. July 2, 1974), CCH Bankr. L. Rep. ¶65,314.

Six of such cases either transferred a Chapter XI proceeding to one under Chapter X or sustained a lower court order directing such a transfer. (SEC v. United States Realty and Improvement Co.; General Stores Corp. v. Shlensky; SEC v. American Trailer Rentals Co.; SEC v. Liberty Baking Corp.; SEC v. Canandaigua Enterprises Corp.; In re Arlan's Department Stores, Inc.). While In re Stonehenge Industries, Inc., supra, denied a motion to transfer to Chapter X, such case involved a real property syndication composed of sophisticated investors in a limited partnership and is hardly appropriate to the matter before the Court.

The holding in the case of Bartle v. Markson Bros., Inc., 314 F.2d 303 (2d Cir. 1963), cited on pages 23 and 29 of Alrac's Brief, sustains a transfer to Chapter X. The Bartle case does not sustain the proposition for which it is cited by Alrac, that Section 366 of the Bankruptcy Act, 11 U.S.C. §766, justifies preserving the interests of shareholders in an arrangement under which unsecured creditors are to receive less than full payment. The Bartle case involved not shareholders, but holders of debenture notes which were subordinated by contract to claims of unsecured creditors.

It is submitted that the overwhelming weight of the authorities cited at page 14 of Alrac's Brief dictates that an arrangement under Chapter XI can go no farther than a simple composition among unsecured creditors. When, as in the case at bar, a readjustment of the interests of public security holders such as the Class III subordinated debenture holders and the interests of shareholders is necessarily involved, the proceeding must be transferred to Chapter X.

POINT VI

THIS APPEAL IS NOT ACADEMIC

Alrac concludes its Brief with an irrelevant argument that the transfer and sale of the Nylon-4 patents are not affected by this appeal. This appeal was not brought to

overturn such transactions. The appeals have been taken for entirely different relief, namely correcting the errors of the courts below in confirming an infeasible Plan under Chapter XI which had not been validly approved by the requisite majority of each class of creditors, and refusing to transfer the proceeding to Chapter X.

That this appeal is not academic appears from allegations made by Alrac in its Brief in support of its other contentions. If the Plan was not properly confirmed, or the reorganization of Alrac debt could more appropriately have been processed under Chapter X, new proceedings will be necessary before distributions can be made to creditors. Whether such new proceedings are under Chapter X or Chapter XI, the discriminatory provisions of the Plan whose confirmation is under attack on this appeal must go before the creditors again. Class II creditors are to receive stock and also cash payments over a period of years. The money for the first 16% of these cash payments has, according to Alrac's Brief at page 46, already been received by Alrac. Thus Class II creditors are already in a far superior position to Class I creditors, if the Plan goes into effect. The Class I creditors will receive only 15%, not 16%. The payment will be made at the same time to creditors of both classes, thus eliminating any benefit of immediate payment to Class I. But in addition, Class I creditors will

be deprived of the large future payments and the stock distribution going to the Class II creditors. If, however, the confirmation of the Plan is reversed, the Class I creditors will have equal standing with Class II and Class III creditors in future negotiations as to the distribution of Alrac's assets. If Alrac's patents were sold, and cash payments from Chevron have been substituted therefor, this appeal has not thereby been rendered academic.

What has been rendered academic, if the sale of patents to Chevron is irreversible, is any argument by Alrac that Alrac is insolvent in the sense that its liabilities exceed its assets. Such sale will assure to Alrac an income of over eight million dollars, far exceeding its liabilities. The asset which was sold must therefore itself have had a value in excess of all of Alrac's liabilities.

CONCLUSION

The judgment of the District Court should be reversed and the case remanded to the District Court with instructions to reverse the orders of the Bankruptcy Court and remand the case to that Court for further proceedings under Chapter X, or if the denial of the motion to transfer to Chapter X is sustained, for further proceedings under Chapter XI.

Respectfully submitted,

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COTTON CONTENT

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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In the Matter of

ALRAC CORPORATION f.d.b.a.
RADIATION RESEARCH CORPORATION
f.d.b.a. THE ALRAC COMPANY,

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Docket No.
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CARL E. BARNES,

Appellant,

AFFIDAVIT OF SERVICE

v.

ALRAC CORPORATION,

Debtor-Appellee.
-----x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

RICHARD L. SCHMEIDLER, being duly sworn, deposes and
says:

I am not a party to the action, am over 18 years of
age, reside at One Fifth Avenue, New York, New York and am a
member of the bar of this Court.

On August 13, 1976, I served two copies of the annexed
Appellant's Reply Brief by mailing the same in a sealed envelope,
with postage prepaid thereon, in a post-office within the State
of New York, addressed to the last known address of the addressees
as indicated below:

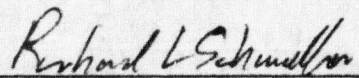
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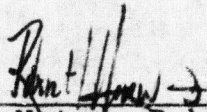
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RICHARD L. SCHMEIDLER

Sworn to before me this
13 day of August, 1976.



Notary Public

ROBERT I. HARWOOD
Notary Public, State of New York
No. 93-4002705
Qualified in Bronx County
Commission Expires March 30, 1978